

IN THE DRAWING(S):

Please replace Figure 14 with the attached replacement drawing sheet including Figure 14 wherein the figure has been corrected in accordance with the Office Action's requested change. This sheet replaces the original sheet showing Figure 14.

Attachment: Replacement Sheet.

REMARKS

By this Amendment, the Figure 14 is amended in accordance with the Office Action's suggestions. Additionally, the claims have been amended to merely clarify the recited subject matter and claims 1, 3-5, 7-11, 13-15 and 17-19 are cancelled without prejudice or disclaimer. Claims 2, 6, 12 and 16 are pending.

The cancellation of claims 1, 7, 10-11 and 17 render their objection and rejections moot.

Claims 1-4, 8, 10-14 and 18 were rejected under 35 U.S.C. 102(e) as being anticipated by Ono et al. (U.S. 6,996,046; hereafter "Ono"), claims 5 and 15 were rejected under 35 U.S.C. 103(a) as being obvious from Ono and Maeda et al. (U.S. 5,420,838; hereafter "Maeda"), claims 6 and 16 were rejected under 35 U.S.C. 103(a) as being obvious from Ono and Ito et al. (U.S. 5,881,032; hereafter "Ito"), claims 7 and 17 were rejected under 35 U.S.C. 103(a) as being obvious from Ono and Itoi (U.S. 5,995,458), claims 9 and 19 were rejected under 35 U.S.C. 103(a) as being obvious from Hagiwara (U.S. 2002/0044507).

The cancellation of claims 1, 3-5, 7-11, 13-15 and 17-19 renders their rejection moot. Applicant traverses the rejection of claims 6 and 16 because the cited prior art fails to disclose, teach or suggest the claimed optical disk apparatus (independent claim 6) and waiting method (independent claim 16) wherein, when the waiting position decision portion detects physical properties of each region in the optical disk from the reflected wave from the optical disk by the optical head and distinguishes the information recording layer into an unrecorded region and a recorded region where the recording processing has been performed on the basis of the detection, when the unrecorded region is present in each of a plurality of recording layers of the optical disk, the waiting position decision portion gives priority to the unrecorded region located in the recording layer on the side of the optical head, and decides the waiting position at a position before a boundary line of the unrecorded region by a predetermined amount toward the side of the recorded region.

As recognized by the Office Action, Ono fails to teach or suggest that, when an unrecorded region is present in each of a plurality of recording layers of an optical disk, the waiting position decision portion may give priority to the recorded region located in the recording layer on the side of the optical head and decided the waiting position at a position before a boundary line of the unrecorded region by a predetermined amount toward the side of the recorded region.

However, the Office asserted that Ito remedies this deficiency of Ono by allegedly teaching that feature at col. 8, lines 64-66 and Figure 1D. The Office further asserted that one of ordinary skill in the art would have combined the teachings of Ito and Ono because for the purpose of being able to continuously reproduce data from a recording medium, as allegedly taught by Ito at col. 4, lines 32-46.

However, contrary to the assertions of the Office, Ito fails to teach or suggest a plurality of unrecorded regions, wherein priority is given to the unrecorded region located in the recording layer on the side of the optical head, as recited in the rejected independent claims 6 and 16 and illustrated in Figure 7.

Rather, Ito teaches nothing about priority being given to unrecorded regions located in a recording area. Rather, Ito merely teaches on the subject of dealing with overrun.

Accordingly, the combined teachings of Ono and Ito fail to teach or suggest the claimed invention wherein, when an unrecorded region is present in each of a plurality of recording layers of an optical disk, the waiting position decision portion may give priority to the recorded region located in the recording layer on the side of the optical head and decided the waiting position at a position before a boundary line of the unrecorded region by a predetermined amount toward the side of the recorded region.

The remaining prior art references similarly fail to teach or suggest this feature. Accordingly, independent claim 6 and 16 and their respective dependent claims 2 and 12 are patentable over the prior art references of record.

In view of the above remarks, it is respectfully submitted that all of the claims are allowable and that the entire application is in condition for allowance. Should the Examiner believe that anything further is desirable to place the application in better condition for allowance, the Examiner is invited to contact the undersigned at the telephone number listed below.

YONEZAWA -- 10/603,989
Attorney Docket: 008312-0304491

Please charge any fees associated with the submission of this paper to Deposit Account Number 033975. The Commissioner for Patents is also authorized to credit any over payments to the above-referenced Deposit Account.

Respectfully submitted,



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